

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

Before the court is Plaintiff Terence McCreary's Motion for Clarification of July 2, 2009, Order (#21¹). Defendant Aetna Life Insurance Company ("Aetna") has filed an opposition (#24) to which Plaintiff replied (#25).

On July 2, 2009, this court entered an order (#20) granting Plaintiff's Motion to Stay Ruling Upon Defendant's Motion to Dismiss Pending Discovery to Respond (#12). In the order, the court granted the parties "60 days to conduct discovery concerning (1) whether McCreary can meet the injury-in-fact element of constitutional standing and (2) whether McCreary is a 'participant, beneficiary, or fiduciary' under 29 U.S.C. § 1132(a)(3)." (Order (#20) at 4.) The parties now dispute whether the order authorizes both parties to conduct discovery or only permits Plaintiff to conduct discovery.

¹Refers to the court's docket entry number

In its order, the court indicated that, in addressing the motion to dismiss, it would employ the standard applicable to a motion for summary judgment and consider whether jurisdictional facts were in dispute. Because there are potential disputed issues of fact, it is appropriate for both Plaintiff and Defendant to conduct the limited discovery authorized by the court's previous order.

IT IS THEREFORE ORDERED that Plaintiff's Motion for Clarification is GRANTED as follows: *Both* parties are granted 60 days to conduct discovery concerning (1) whether McCreary can meet the injury-in-fact element of constitutional standing and (2) whether McCreary is a “participant, beneficiary, or fiduciary” under 29 U.S.C. § 1132(a)(3).

Any further disputes concerning the limited discovery authorized by the court will be referred to U.S. Magistrate Judge Robert A. McQuaid.

IT IS SO ORDERED.

DATED this 26th day of October, 2009.

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**LARRY R. HICKS
UNITED STATES DISTRICT JUDGE**